

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Misuse of Internet Protocol (IP) Captioned Telephone Service	)	CG Docket No. 13-24
	)	
Telecommunications Relay Services and Speech- to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

To: Secretary, Federal Communications Commission  
For: Chief, Consumer and Governmental Affairs Bureau

**JOINT PETITION FOR LIMITED WAIVER**

Hamilton Relay, Inc. (“Hamilton”) and Sprint Corporation (“Sprint” and, collectively with Hamilton, the “Petitioners”) hereby petition the Consumer and Governmental Affairs Bureau (“Bureau”) for a limited waiver of a narrow aspect of the Commission’s August 26, 2013 *Report and Order* adopting permanent rules for Internet Protocol Captioned Telephone Service (“IP CTS”) providers.<sup>1</sup> Specifically, Petitioners request a temporary waiver of Section 64.604(c)(11)(iii) which, upon approval by the Office of Management and Budget, will contain certain IP CTS labeling obligations (the “Labeling Rule”).<sup>2</sup> Petitioners are requesting that all IP CTS providers be granted waivers of the Labeling Rule in order to allow additional time to come into compliance with the Labeling Rule requirements.

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<sup>1</sup> *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 13-24 & 03-123, FCC 13-118 ¶ 90 (rel. Aug. 26, 2013) (“*Order*”).

<sup>2</sup> 47 C.F.R. § 64.604(c)(11)(iii). The Labeling Rule becomes effective upon approval by the Office of Management and Budget (“OMB”) and public notice of such approval. *See* *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities*, *Final Rule*, 78 Fed. Reg. 53684 (Aug. 30, 2013); *see also* 47 C.F.R. § 64.604(c)(11)(iii) Note.

Specifically, with respect to IP CTS equipment manufactured on or after the date that OMB approval is obtained for the Labeling Rule, Petitioners request a waiver of an additional ninety (90) days from the date that OMB approval is obtained for the Labeling Rule. With respect to IP-CTS equipment manufactured before the date that OMB approval is obtained for the Labeling Rule that is not already-deployed to a consumer, Petitioners request a waiver of an additional thirty (30) days after the piece of equipment has been registered to a consumer. With respect to already-deployed IP CTS equipment, Petitioners need additional time to obtain the user information needed to send the labels to existing users, and therefore Petitioners request a waiver until thirty (30) days after the effective date of Section 64.604(c)(9)(xi) of the Commission’s rules (the “Registration Rule”), which grants IP CTS providers a 180-day grace period after OMB approval in which to register existing IP CTS users.<sup>3</sup> Finally, with respect to mobile applications, Petitioners request a waiver of an additional 90 days from the date that OMB approval is obtained for the Labeling Rule.

## **I. LEGAL STANDARD**

The Bureau, acting under delegated authority, may waive a rule when good cause is demonstrated.<sup>4</sup> Good cause exists where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> In considering a waiver request, the Bureau may consider considerations of hardship, equity, or the more effective implementation of overall policy on an

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<sup>3</sup>See § 64.604(c)(9)(xi) Note (providing that the requirement to register IP CTS consumers who began service prior to March 7, 2013 is effective 180 days after OMB approval); *see also Order* ¶ 70. Petitioners also request temporary waiver of Section 64.604(c)(11)(iv) to the extent that the recordkeeping requirement would still apply.

<sup>4</sup>47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

<sup>5</sup>*See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(“*Northeast Cellular*”).

individual basis.<sup>6</sup> Thus, waiver of the Commission's rules is appropriate when special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>7</sup> Further, it is arbitrary and capricious to enforce requirements that cannot be satisfied.<sup>8</sup>

Pursuant to these standards for waiver, Petitioners demonstrate below that there is good cause under three separate but related situations that merit temporary waivers of the Labeling Rule. Because each of the three situations presents different factual circumstances and challenges, the length of each waiver request varies.

## **II. THE PUBLIC INTEREST WOULD BE SERVED BY A BRIEF DELAY IN ENFORCING THE LABELING REQUIREMENTS**

The Labeling Rule provides:

IP CTS providers shall ensure that any newly distributed IP CTS equipment has a label on its face in a conspicuous location with the following language in a clearly legible font: "FEDERAL LAW PROHIBITS ANYONE BUT REGISTERED USERS WITH HEARING LOSS FROM USING THIS DEVICE WITH THE CAPTIONS ON." For IP CTS equipment already distributed to consumers by any IP CTS provider as of the effective date of this paragraph, such provider shall, within 30 days of the effective date of this paragraph, distribute to consumers equipment labels with the same language as mandated by this paragraph for newly distributed equipment, along with clear and specific instructions directing the consumer to attach such labels to the face of their IP CTS equipment in a conspicuous location. For software Applications on mobile phones, laptops, tablets, computers or other similar devices, IP CTS providers shall ensure that, each time the consumer logs into the application, the notification language required by this paragraph appears in a conspicuous location on the device screen immediately after log-in.<sup>9</sup>

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<sup>6</sup>*Id.*; *WAIT Radio*, 418 F.2d at 1159.

<sup>7</sup>*See Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup>*See Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991); *D.C. Transit Sys., Inc. v. Washington Metropolitan Area Transit Comm'n*, 466 F.2d 394, 402 (D.C. Cir. 1972), *cert. denied* 409 U.S. 1086 (1972).

<sup>9</sup> 47 C.F.R. § 64.604(c)(11)(iii).

Thus, under the Labeling Rule Petitioners face three separate but related labeling requirements for: 1) newly distributed equipment; 2) already-deployed equipment; and 3) web and mobile devices. Each of these labeling requirements presents distinct challenges.

**A. Newly Distributed IP CTS Equipment**

First, with respect to “newly distributed IP CTS equipment,” the Labeling Rule takes effect immediately upon OMB approval, which could be as soon as November.<sup>10</sup> The Petitioners’ equipment supplier has indicated that there will be a significant backlog of equipment that has already been manufactured without labels and that is already sitting in storage, is in the manufacturing pipeline, or is in the possession of a state Equipment Distribution Program or third party commercial reseller and will not actually be distributed until after November. Affixing labels to these products, which are or will be scattered throughout warehouses nationwide, will not be possible until the phones have been shipped to users. Thus, there is a significant amount of IP CTS equipment that, even though it is technically “newly distributed,” was manufactured and shipped from the original equipment manufacturer well before the Labeling Rule was announced on August 26, 2013. It will take time to work through this backlog, but Petitioners’ equipment manufacturer has indicated that it will be ready to ship any IP CTS equipment that will be manufactured after the date of OMB approval the Labeling Rule with compliant labels within ninety (90) days of OMB approval of the Labeling Rule. Accordingly, Petitioners request that a waiver be granted so that newly distributed IP CTS equipment that has been manufactured and packaged for sale on or after the effective date of the Labeling Rule must comply with the Labeling Rule within ninety (90) days of publication of such OMB approval in the *Federal Register*. With respect to IP CTS equipment that was

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<sup>10</sup> See Information Collection Being Reviewed by the Federal Communications Commission, 78 Fed. Reg. 59,025 (Sept. 25, 2013).

manufactured and packaged for sale prior to date of OMB approval of the Labeling Rule, Petitioners request that a waiver be granted allowing Petitioners thirty (30) days from the registration of the User obtaining previously manufactured equipment to comply with the Labeling Rule for that unit.

## **B. Already-Deployed IP CTS Equipment**

Second, with respect to “IP CTS equipment already distributed to consumers,” Petitioners face the difficulty of sending labels to those existing users within 30 days of the effective date of the Labeling Rule, even though IP CTS providers have 180 days in which to register many of those users under the Registration Rule.<sup>11</sup> Thus, IP CTS providers may lack the current contact information for those users, which renders compliance with the Labeling Rule impractical or even impossible.<sup>12</sup> A strict application of the Labeling Rule therefore would be inconsistent with the *Order*’s implicit recognition that identifying, registering, and collecting information from IP CTS users would take up to 180 days.<sup>13</sup>

Given the IP CTS providers’ lack of registration information potentially until the end of the Registration Rule period, Petitioners believe that it would be rational to afford providers an additional 30 days after the end of the 180-day registration period in which to comply with the Labeling Rule as applied to already-deployed equipment. In this way, providers will have

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<sup>11</sup> Earlier this year and prior to the adoption of the *Order*, the Commission took interim action to require that IP CTS providers register each new IP CTS user, among other things. The interim registration rule became effective March 7, 2013. See Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities, *Interim Rule; announcement of effective date*, 78 Fed. Reg. 14701 (Mar. 7, 2013). Prior to March 7, 2013, IP CTS providers were not required to register users.

<sup>12</sup> Because IP CTS providers receive IP signaling, rather than signaling from the Public Switched Telephone Network, IP CTS providers often lack a phone number for users that obtained IP CTS equipment from a third party. This makes identification of these users and collection of their information more challenging.

<sup>13</sup> *Order* ¶ 70.

sufficient time (i.e., 30 days) to provide labels to users who are not registered until the 180<sup>th</sup> day of the registration period.

### **C. IP CTS Mobile Applications**

Finally, with respect to labeling requirements for mobile IP CTS applications, Petitioners face the problem of having to develop a new version of the mobile application that includes the Labeling Rule language. It simply takes time, a matter of numerous months, not days, to work through the developmental stages of a new app version, and to have the new version approved by the various vendors and application managers involved. For these reasons, Petitioners submit that the Labeling Rule as applied to software applications and wireless equipment should be waived for 90 days after OMB approval of the Labeling Rule.

### **III. CONCLUSION**

For the reasons set forth above, Petitioners request a temporary, limited waiver of Section 64.604(c)(11)(iii) of the Commission's rules so that IP CTS providers will be required to comply with the Labeling Rule as follows:

- For *IP CTS equipment manufactured on or after the date of OMB approval of the Labeling Rule*: Within 90 days of publication of a notice in the *Federal Register* indicating that OMB has approved the information collection requirements contained in the Labeling Rule;
- For *IP CTS equipment manufactured before the date of OMB approval of the Labeling Rule that is not already-deployed to a consumer*: Within 30 days of the equipment being registered to a consumer.
- For *already-deployed equipment*: Within 30 days of the end of the 180-day registration period under the Registration Rule; and

- For *mobile applications*: Within 90 days of publication of a notice in the *Federal Register* indicating that OMB has approved the information collection requirements contained in the Labeling Rule.

Respectfully submitted,

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September 30, 2013